

**Before the Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Third Periodic Review of the)	MB Docket No. 07-91
Commission's Rules and Policies)	
Affecting the Conversion to)	
Digital Television)	

Directed to: The Commission

REPLY COMMENTS OF MID STATE TELEVISION, INC.

Mid State Television, Inc. ("Mid State"), licensee of WMFD-TV and WMFD-DT, Mansfield, Ohio, by its attorneys, hereby respectfully submits its Reply Comments in response to the *Notice of Proposed Rule Making*, FCC 07-70, released May 18, 2007 ("*NPRM*"), in the above-captioned proceeding. With respect thereto, the following is stated:

1. Mid State has reviewed the comments filed in this proceeding and wishes to express its strong support for the positions taken by certain of the commenters and to provide further information in support of those positions. Specifically, Mid State joins with the substantial number of commenters that have urged the Commission to be provide for additional time past the DTV transition date of February 17, 2009, for stations to complete their final DTV facilities. While Mid State understands that the Commission is statutorily precluded from allowing analog operations beyond that deadline, and any station that is broadcasting after the deadline must be using DTV facilities, the statute does not require that such operations necessarily must be with full, maximized DTV facilities. Given the technical difficulties involved in the physical addition or replacement of antennas in order to construct maximized facilities, additional time is

warranted in order to allow this process to be completed in a timely manner.

2. While the Commission has indicated that it may be willing to allow stations to reduce or eliminate analog service in order to complete the DTV transition, this proposal would offer but a hollow promise due to the number of viewers that could be lost in the process. While the penetration rate of DTV receivers is growing, a large percentage of homes still do not own one, and Mid State would venture that the average household with multiple television sets has not replaced all of them. Thus, viewers in such households would necessarily be lost. Moreover, those households that receive their television programming through satellite providers also could be lost upon the termination of analog service. At this time, there are no DBS must-carry requirements for DTV-only stations. Thus, if a station were to elect to terminate analog service early in order to allow for the installation of DTV facilities, it could be faced with the immediate loss of carriage by the DBS services. Accordingly, Mid State joins with Christian Television Network, Inc.; Christian Television Network of Iowa, Inc.; and Volunteer Christian Television, Inc. in urging the Commission immediately to conclude its proceedings regarding carriage of DTV-only stations on DBS systems, as previously mandated by Congress.

3. As noted above, Mid State is the licensee of WMFD-TV and WMFD-DT, which is an independent station located in Mansfield, Ohio. Mid State was among the early adopters of DTV, and it is Mid State's understanding that WMFD-DT was the first independent station to begin full-power DTV operation. Full-power facilities for WMFD-DT were completed in February 1999, and its DTV license was granted on August 23, 1999. Since that time, Mid State has twice sought to improve WMFD-DT's facilities to provide improved service. The first of those upgrades was completed in October 2002. Thereafter, on May 26, 2004, Mid State filed an

additional application for construction permit for modified facilities in order to improve its DTV facilities. That application was ultimately granted on July 15, 2005, but only after substantial intervening international difficulties not of Mid State's making and beyond its control.

4. In January 2005, Mid State learned for the first time of a problem with the facilities specified in its pending application due to an amendment to the Letter of Understanding ("LOU") between Canada and the United States with regard to digital television broadcasting. This amendment included a change in a vacant DTV allotment at Chatham, Ontario from Channel 63 to Channel 12, co-channel with WMFD-DT. While the text of the document was finalized in March 2003, the amendment was not signed or made available to the public until October 2004, nor was the change in channel referenced in the Commission's database.¹ Thus, there was no way for the licensee to have learned of the change prior to the time of filing its application, but the revised provisions were nonetheless applied to Mid State's application.

5. After learning of this difficulty, Mid State entered into substantial discussions with the Commission's International Branch and Media Bureau, and it engaged a Canadian consultant to confer with and negotiate with Industry Canada a resolution of the engineering issues raised. At the conclusion of this process, WMFD-DT's consulting engineer was able to develop a revised engineering proposal acceptable to all parties. Included among the revisions were a new directional pattern, a different antenna, and a slight increase in effective radiated power from 13 kW to 14 kW. Thereafter, with Canadian concurrence, the application as amended was granted.

¹ Indeed, in the recently released *Seventh Report and Order* in MB Docket No. 87-268, *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, FCC 07-138, released August 6, 2007, Footnote 273 itself indicates that the LOU was "amended Oct. 7, 2004." *Id.* at ¶103, fn 273.

6. Needless to say, this process created substantial costs associated with the re-engineering of the proposed modification. Furthermore, the new antenna that was required to be specified is one which is substantially heavier than that which was originally proposed. This added weight will add substantially to the cost of constructing the modified facilities. More critically, however, the additional weight makes it impossible for the antenna specified in the construction permit to be mounted on the station's tower until the analog antenna is removed. Therefore, it is essential that WMFD-DT be provided with additional time beyond February 17, 2009, in which to remove the analog antenna and mount the new digital antenna to achieve its fully maximized facilities for which it holds a construction permit. This removal and reconstruction process is necessarily one which will require some time and cannot be unduly rushed.

7. The timing is further complicated by the fact that the DTV transition deadline and the months leading up to it are in winter, when any tower work is far more difficult. In addition, many other television stations across the country also will be attempting to employ the limited number of tower construction crews that are capable of undertaking the work. Mid State therefore strongly supports those commenters that have urged the Commission to provide an extension of time for nine months to one year past the DTV transition deadline. Without such an extension, the completion of WMFD-DT's maximized facilities, which must await removal of the station's analog antenna, will be a practical impossibility. Moreover, given the protracted international negotiations that had to be undertaken in order to obtain grant of the current construction permit, it is highly uncertain whether it would ever be possible to maximize WMFD-DT's facilities in the future. Clearly, such a result would be contrary to the public

interest.

8. If the proposed extension were granted, however, WMFD-DT would be able to continue to operate with its current, side-mounted facilities.² While this antenna is much smaller than the new DTV antenna proposed, the facilities are full-power facilities and provide substantial service in accordance with the WMFD-DT license. During the period immediately following the DTV transition deadline, therefore, WMFD-DT would be able to continue providing full-power DTV service in its market while at the same time going forward with construction of fully maximized facilities to provide additional service to the public.

9. While the Commission has indicated that it may allow stations to terminate analog service early under certain circumstances, as noted above, this alternative is not necessarily a feasible answer for stations. In the case of WMFD-DT, termination of analog service would be required, as it will be necessary to remove the analog antenna in order to mount the new DTV. Furthermore, taking winter weather considerations into account, in order construction of the new facilities to be completed by February 2009, it would be essential for the removal of the analog antenna to take place in Summer 2008. Thus, the time period between the necessary commencement of any early termination of analog service and the DTV transition deadline would be significant, amounting to six months or more. This loss of analog service so far in advance of the DTV transition deadline would have devastating economic consequences,

² While Mid State recognizes that its modification construction permit currently has an expiration date prior to the DTV transition deadline, it has received an informal indication that the permit will be treated as other outstanding permits for top-mounted antennas and will thus be extended through the date by which final, maximized facilities must be constructed. Mid State urges the Commission to continue to follow this approach.

especially for an independent station such as WMFD-TV. First, and most obviously, there would be a loss of those viewers that rely on over-the-air analog broadcast service, including those households that might have second or third television sets not connected to any multi-channel video provider or not yet replaced by a DTV receiver.

10. In addition, stations moving to DTV-only status currently would be subject to loss of their DBS carriage rights. The Commission has previously stated that DTV-only stations do not have the same must-carry rights on DBS systems that they do on cable systems, as there are no rules in place requiring carriage of DTV-only stations in place. *Guenter Marksteiner v. EchoStar*, 18 FCC Rcd 396 (Med.Bur. 2003). That situation remains the same to date. Therefore, any station which ceases its analog broadcasts and becomes a DTV-only station also becomes immediately subject to the loss of its DBS carriage rights. The result to the public in this instance is even more disruptive than in the case of those stations that never achieved DBS carriage at all. When a station has been carried and is removed, viewers experience an actual loss of a service on which they have come to rely.

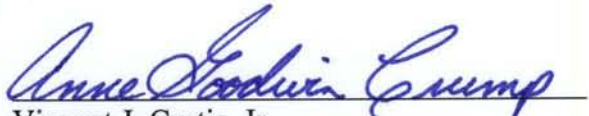
11. Consider WMFD-DT as an example. The station has a long history of providing substantial local programming, including local news and local weather. Nonetheless, as WMFD-TV is an independent station, a DBS system might well feel it beneficial to drop carriage for another, potentially more profitable, satellite channel. Once the station became a digital-only WMFD-DT, there would be nothing to stand in the way of making that change, and viewers would lose their local television station. These considerations will face every television station that considers an early termination of analog service. Therefore, as more and more stations reach digital-only status through the transition, it is imperative that the Commission complete its rule

making proceeding to adopt DBS must-carry provisions for DTV-only stations.

12. Taking the factors discussed above into consideration, Mid State therefore strongly urges the Commission to extend the time by which stations must complete their final, maximized DTV facilities and to act immediately to implement DBS must-carry rules for DTV-only stations.

Respectfully submitted,

MID STATE TELEVISION, INC.

By: 
Vincent J. Curtis, Jr.
Anne Goodwin Crump

Its Attorneys

FLETCHER, HEALD & HILDRETH, P.L.C.
1300 N. 17th Street
Eleventh Floor
Arlington, Virginia 22209
(703) 812-0400

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